

**NOTICE OF FINAL RULEMAKING**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)**

**ARIZONA LONG-TERM CARE SYSTEM**

**PREAMBLE**

**1. Sections Affected**

R9-28-506

**Rulemaking Action**

New Section

**2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: ARS §§ 36-2932, 36-2939

Implementing statute: ARS § 36-2939

**3. The effective date of the rules:**

The Administration requests an immediate effective date of October 2, 2007. An immediate effective date is authorized under A.R.S. § 41-1032 (A)(4) because the rule provides a benefit to the public and a penalty is not associated with a violation of the rule. The rule provides a benefit to the public by describing the circumstances when a spouse can be reimbursed for providing personal care services to an ALTCS HCBS member. The rule also expands the pool of individuals who qualify to provide these services, therefore, making them more accessible to other HCBS members.

**4. A list of all previous notices appearing in the *Register* addressing the final rules:**

Notice of Docket Opening: 13 A.A.R. 2171, June 22, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 2258, June 29, 2007

**5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

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**6. An explanation of the rule, including the agency's reasons for initiating the rule:**

The 1115 Waiver Amendment, under which Arizona administers its Medicaid program, that was approved by Centers for Medicare and Medicaid Services (CMS) in October 2006 authorizes coverage of personal care

services by a spouse of an ALTCS member in a home and community based setting (HCBS) under certain circumstances. The rule is intended to describe the requirements that must be met as imposed by the Waiver for coverage of this care by a spouse.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

No study was reviewed during this rulemaking and the Agency does not anticipate reviewing any studies.

**8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. The summary of the economic, small business, and consumer impact:**

The rule provides for the requirements that must be met for the Administration to cover personal care services provided to an ALTCS member by a spouse. The economic impact of the rule is anticipated to be minimal.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

No additional changes have been made between the proposed rules and the final rules below, with the exception of clarifying the following:

In R9-28-508 (B)(6), how the spouse must be registered or employed when the member is a Native American,

In R9-28-508 (B)(8), how the Administration vs. a Program Contractor may pay for the spouse providing the service,

In R9-28-508 (B)(10), how the 40-hour service limit may be provided by the spouse or another personal caregiver. The Administration made the rules more clear, concise, and understandable by making grammatical, verb tense, punctuation, and structural changes throughout the rules.

Minor technical and grammatical changes were made at the suggestion of GRRC staff.

**11. A summary of the comments made regarding the rule and the agency response to them:**

The Administration did not receive any comments regarding the rules.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**13. Incorporations by reference and their location in the rules:**

Not applicable

**14. Was this rule previously adopted as an emergency rule?**

No

**15. The full text of the rules follows:**

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**ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS**

Section

R9-28-506. ~~Reserved~~ Requirements for Spouse as Paid Caregiver

## TITLE 9. HEALTH SERVICES

### CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

#### ARIZONA LONG-TERM CARE SYSTEM

#### ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

##### **R9-28-506. Reserved Requirements for Spouse as Paid Caregiver**

A. For purposes of this Section, the following definitions apply:

1. "Extraordinary care" means care that exceeds the range of activities that a spouse would ordinarily perform in the household on behalf of the ALTCS member if the member did not have a disability or chronic illness, and that is necessary to ensure the health and welfare of the member and avoid institutionalization.
2. "Personal care or similar services" means assistance provided to an ALTCS member with a disability or chronic illness to enable the member to perform Activities of Daily Living (ADL) or Instrumental Activities of Daily Living (IADL) that the member would normally perform for himself or herself if the member did not have a disability or chronic illness. Assistance may involve performing a personal care task for the member or cuing the member so that the member performs the task for himself or herself.

B. As authorized by the Section 1115 Waiver, a member may choose to have personal care or similar services provided by the member's spouse as a paid caregiver if the following conditions and limitations are met:

1. The member resides in his or her own home;
2. The Administration or a Program Contractor offers the member the choice of a provider of personal care or similar services other than the member's spouse;
3. The personal care or similar services is described in the member's plan of care prepared by the member's case manager;
4. The case manager records at least annually in the member's plan of care the member's choice to have personal care or similar services provided by the member's spouse as a paid caregiver;
5. The personal care or similar services provided by the spouse are extraordinary care;
6. The spouse is one of the following:

- a. Employed by a provider that subcontracts with the member's Program Contractor;
  - b. If the member is developmentally disabled, the spouse is either employed by a provider that subcontracts with the member's Program Contractor, or registered with AHCCCS as an independent provider; or
  - c. If the member is a Native American enrolled in FFS, the spouse is either employed by an AHCCCS registered provider or registered with AHCCCS as an independent provider;
- 7. The spouse meets the training and other qualifications that apply to other providers of personal care or similar services registered with AHCCCS;
  - 8. The Program Contractor does not pay a spouse providing personal care or similar services at a rate that exceeds the rate that would be paid to a provider of personal care or similar services who is not a spouse and the Administration does not pay a spouse providing personal care or similar services at a rate that exceeds the capped fee-for-service payment for personal care or similar services; and
  - 9. A spouse providing personal care or similar services as a paid caregiver is not paid for more than 40 hours of services in a seven-day period.
- C. For a member who elects to have the member's spouse provide personal care or similar services as a paid caregiver, personal care or similar services in excess of 40 hours in a seven-day period are not covered. If a spouse elects to provide less than the hours authorized by the Administration or Program Contractor, the remaining hours of medically necessary personal care or similar services may be provided by another personal caregiver, but the total hours of care provided by the spouse and any other personal caregiver shall not exceed 40 hours in a seven-day period.
  - D. By electing to have the member's spouse provide personal care and similar services as a paid caregiver, the member is not precluded from receiving medically necessary, cost effective home and community based services other than personal care or similar services.